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Academic, Religious Groups Confront Unique Social Security Rules

Brent Jackson
KPMG US

Academic and religious organizations face unique and challenging Social Security rules, including statutory elections and important international considerations, requiring careful consideration to ensure compliance and protect employee benefits.

Because of their unique organization, needs, and missions, nonprofit organizations frequently face complex tax rules and regulations that differ substantially from those applicable to for-profit enterprises. One common misconception is that these organizations have more favorable (and, by implication, easier) tax reporting and compliance requirements. In reality, the peculiarities of the rules applicable to nonprofits can result in additional considerations that complicate compliance efforts.

In no area of tax is this more evident than in social security and Medicare. Academic and religious organizations must often navigate a complex labyrinth of elections, classifications, and special scenarios—often with little in the way of clear guidance from governmental authorities. Many employees of these organizations are more dependent on social security and Medicare for retirement income than their counterparts in the for-profit sector, so ensuring compliance not only protects universities and religious organizations themselves, but also provides crucial post-retirement income for these employees.

Social Security and Medicare

The social security and Medicare systems are financed by contributions from one of two taxes—the Federal Insurance Contributions Act payroll taxes or the Self-Employment Contributions Act taxes.

FICA. Employees and their employers each contribute under FICA—each paying 6.2% tax on earnings (up to a statutory maximum of $184,500 in 2026) for social security and 1.45% tax on all earnings (with no statutory ceiling) for Medicare. Employers also withhold and remit an Additional Medicare Tax of 0.9% of earnings above $200,000 per year ($250,000 for married filing jointly, or $125,000 for married filing separately). FICA taxes are generally mandatory for all employees performing work in the US, including territories, as well as for all US nationals or green card holders working for a US employer abroad.

*Brent Jackson is a director with the Global Mobility Services group in KPMG's Washington National Tax practice.

SECA. Most self-employed persons with at least $400 of net earnings from self-employment in a calendar year contribute under SECA, and US nationals and green card holders are liable for SECA contributions on their worldwide self-employment income. Self-employed persons contribute both the employer and employee share of SECA, with a deduction available for the employer share.

Unique Coverage Scenarios

Higher Education. The vast majority of higher education faculty—including adjunct or tenured professors, student teachers, and researchers—are considered employees of the university. Notable exceptions to this are certain guest speakers/lecturers, as well as certain members of the board of trustees who receive stipends and reimbursements for their activities related to serving as a member of the board. In determining if an employer-employee relationship exists and if there is an obligation for employers to withhold and remit FICA taxes on behalf of workers, the tenet of the common law control test should be applied to avoid misclassifying workers as independent contractors.

Religious Organizations. With respect to churches and other religious organizations, there are generally two classes of employees who receive radically different treatment in their social security obligations. Non-ministerial employees and other non-clergy are typically treated as ordinary employees of the religious organization with respect to wages as compensation for services rendered on behalf of the organization. These employees include administrative, custodial, financial, or HR staff that are not directly involved in ministerial duties and are eligible for employer withholding and remittance of FICA taxes.

Ordained ministers, clergy, and certain church missionaries are considered common law employees of the church, receiving income that is reported on Form W-2, but who are considered self-employed for purposes of US social security. These employees pay both the employer and employee share of SECA taxes on their US-source income, and US nationals and green card holders pay SECA taxes on their worldwide income.

Visa Exemptions

Because of the competitive nature of academia in drawing from a global talent pool, institutions of higher learning often rely on international students, professors, and researchers to fill critical roles in their organizations. Certain special visa categories exist to facilitate compliance and ease the tax burden on these classes of workers. One such provision of the law applies to students, teachers, and researchers at an educational institution in the US.

IRC §7701(b)(3)(D) provides that persons working in the US on an F, J, M, or Q visa may be exempt from counting days for purposes of the substantial presence test, which is used to determine US tax residency. (Under the Substantial Presence Test, a person is generally considered a resident of the United States for any year in which he or she is present for at least 31 calendar days and 183 days total in the current and past two calendar years. Only 1/3 of days count for the prior calendar year, and only 1/6 for the year prior to that year.) This exemption applies for a limited period if these individuals meet certain requirements, provided the work is related to the purposes for which the visa was issued or is otherwise authorized by US Customs and Immigration Service. IRC §3121(b)(19) creates an exemption from FICA liability for any employees who are nonresident aliens and exempt persons pursuant to an F, J, M, or Q visa to the extent that they are providing services for which the visa was issued.

These visa holders are often considered nonresident aliens for tax purposes for such periods and are generally exempt from FICA taxes on wages from authorized employment:

- F-1 (full-time student at an approved American educational institution)—any on-campus employment or any other employment authorized by USCIS;
- M-1 (nonacademic student enrolled in certain vocational training programs in the US)—USCIS approved employment. USCIS must approve both on-campus and off-campus employment; and
- J-1 (exchange visitor) and Q-1 (cultural exchange visitor)—any employment approved by the visitor's sponsor is excluded from coverage.

Students are generally exempt for up to five calendar years, a lifetime limit, and are exempt for any part of a calendar year in which they are present and working in the US under the relevant visa category. These years need not be consecutive, so prior years under a student visa count toward the total allowable period of exemption.

Teachers and researchers are generally eligible for up to two calendar years before employers are required to remit FICA on their behalf. This two-year limitation is subject to a six-year lookback period; after six years from the last calendar year a person was present in the US under a J or Q visa, they are eligible for a new two calendar year exemption period.

Any full calendar year or part of a calendar year counts toward this exemption period. If a visa holder enters the US in December 2022, 2022 counts as the first calendar year.

If an individual can demonstrate to the IRS that they do not intend to reside permanently in the US and maintains a closer connection to another country, they can file Form 8843, *Statement for Exempt Individuals and Individuals With a Medical Condition*, and provide supporting documentation to request an extension. These extensions are not automatic, require strong justification, and are granted solely at the IRS's discretion.

Once the exemption period has ended, days of presence in the US begin to count toward the substantial presence test, and FICA withholding becomes mandatory once the substantial presence test is met. Alternatively, if the visa status has changed and the person is no longer in a non-exempt visa category, FICA withholding applies immediately regardless of the substantial presence test.

Church and Clerical Elections

Most employment is compulsorily covered under social security. Congress, however, provided several specific elections that allow certain religious organizations and their employees to opt out of the standard social security system. These elections are sometimes irrevocable and can have profound long-term consequences for post-retirement income.

Section 1402(e) Election. Churches and other religious organizations are often not required to withhold and remit FICA taxes on behalf of their clergy for work of a ministerial nature. These clergy members are usually treated as self-employed persons for purposes of social security and report SECA taxes by filing a Schedule SE on their annual tax returns. In return, they receive social security and Medicare credits and may receive a benefit upon meeting the eligibility criteria.

Certain clergy members and ministers may be opposed for religious reasons to participating in public insurance benefits such as the US social security program, and IRC §1402(e) provides an exception to

compulsory social security coverage. The election is available only to the following categories of clergy members:

- Duly ordained, commissioned, or licensed ministers of a church;
- Members of religious orders who have not taken a vow of poverty; and
- Christian Science practitioners.

The sole basis for this exemption is conscientious opposition to participating in the social security and Medicare systems, and the applicant must attest that they are opposed to receiving public insurance benefits based on the tenets and teachings of their faith. This election is not available for purposes of alternative retirement planning outside of the social security and Medicare programs.

Very strict deadlines apply to this election. Clergy members requesting the exception must file Form 4361, *Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners*, by the due date (including extensions) of the tax return for the second tax year in which the individual has at least $400 of net earnings from self-employment, where some of that income is from ministerial services.

To illustrate, if a minister is newly ordained in 2025 and starts earning net earnings from self-employment in 2026, they would generally need to file Form 4361 before the due date of their 2027 tax return to be eligible for the exemption.

Once made, this decision is usually irrevocable. Certain clergy members who have made this election in the past have discovered that it left them with very little in the way of retirement income. The IRS has allowed special revocations of this election in the past, specifically for tax years 1986, 1987, 2000, and 2001 when people were allowed to opt back into paying self-employment tax. This decision, however, has otherwise been irrevocable and affected individuals have not been allowed to rescind the decision to opt back into paying SECA taxes.

Section 3121(r) Election. Certain churches and religious orders may require members of the organization to take a vow of poverty. Typically, there is no compensation provided for any services performed for these activities, so these members would not have coverage under Title II of the Social Security Act to entitle them to a benefit upon retirement, disability, or death. They would also be ineligible for Medicare coverage because of nonparticipation in the system.

IRC § 3121(r) allows these organizations to include the fair market value of board, lodging, clothing, and other perquisites pursuant to IRC §3121(i)(4) as "wages" for purposes of credits under Title II of the social security program. For purposes of IRC §3121(r), these members include a person who:

- is subject to a vow of poverty as a member of the organization;
- performs the services usually required of an active member; and
- is not considered retired because of age or total disability.

Once an organization makes this election, it is binding on all its members and irrevocable. This election can be made by filing Form SS-16, and requires these organizations to both obtain an Employer Identification Number and complete a quarterly employment tax return (Form 941).

Section 3121(w) Election. While religious organizations are generally considered common law employers of their clergy members and ministers, they often do not withhold and remit FICA taxes on their behalf. This is not true, however, of non-ministerial church members, such as administrative staff, teachers, custodial staff, etc. These taxpayers are treated as employees of the church for purposes of social

security. Therefore, the church is expected to withhold and remit taxes for both the employer and employee share of FICA.

Section 3121(w) of the IRC allows churches and qualified church-controlled organizations that are opposed, for religious reasons, to the payment of US social security and Medicare taxes to opt out of withholding and remitting FICA taxes on behalf of their non-ministerial employees. Essentially, this election provides for the same social security treatment of ministerial and non-ministerial staff, with all employees remitting both the employer and employee share of SECA.

Churches and religious organizations may elect exemption from paying these taxes by filing Form 8274. The church or church-controlled organization may revoke this election later.

Totalization Agreements

Cross-border assignments and work activity can create a complex and difficult social security landscape for employers and their internationally mobile employees. These include the possibility of dual social security taxation and coverage, as well as costly gaps in a person's work history that could adversely affect future benefit amounts.

To alleviate these issues, the US has entered into a network of totalization agreements with 30 important trading partners. These agreements:

- eliminate dual taxation and coverage on the same work;
- enhance benefit protections for workers who divided their careers between the US and another country; and
- remove any payment restrictions that may apply to residents of the two countries.

The general rule for social security coverage and taxation under totalization agreements is that a person's work is covered under the social security system of the country in which it is performed. However, there are exceptions to this rule.

Professors and Researchers. Most university professors and researchers are employees of the organizations for which they work. Under totalization agreements, employers can opt to send an employee from the territory of one country to the other for a temporary period (generally for a period that is not expected to exceed five years), while the employee remains subject solely to home country social security taxation and coverage. This would be the typical method of assigning an employee to work for that same employer in another country.

University professors or researchers on sabbatical who serve as a guest lecturer or conduct research abroad may face the prospect of overlapping contributions. While on sabbatical, a professor or researcher generally continues to receive partial compensation that is attributable to their position in the US. If they take up a position abroad for a separate employer, that compensation would then become subject to the host country's social security system. Because these are considered separate employment under ordinary totalization agreement rules, the income would be taxed according to the country to which it is sourced.

To prevent this overlapping coverage, the Social Security Administration has concluded administrative understandings with a number of totalization partners. These exceptions are generally time limited to one year or less, and in most cases, provide that only the earnings from work performed in the home country will be subject to social security taxation and coverage.

Clergy and Board Members. Clergy and certain board members who are not employees of the organization for which they are performing services are usually considered self-employed for US social security purposes. Such individuals cannot use the detached worker rule to retain home country social security coverage. Instead, they are usually covered pursuant to a different coverage rule under totalization agreements – the coverage rule for self-employment. This rule often falls into one of three buckets:

- Residence-based self-employment rule;
- Transferred self-employment rule; and
- Other anomalous rules.

The residence-based self-employment rule is perhaps the most prevalent rule for covering self-employment under totalization agreements, and it provides that where a person is conducting self-employment activity in one or both countries, they will be covered solely in the country in which they reside. Note that the concept of "residency" for totalization agreements differs from the concepts of tax home or tax residency, and is generally defined at 20 C.F.R. §404.1902.

Alternatively, many agreements contain a rule whereby a person can opt to transfer their self-employment activity from the territory of one country to the other for a temporary period. This largely mirrors the rule for detached workers and is generally also available for up to five years. (The U.S.-France agreement limits this to two years maximum.) The US-France agreement limits this to two years maximum. Finally, some older totalization agreements contain anomalous provisions for assigning coverage to self-employed workers. Thus, it is important to consult the text of each agreement to ensure that you are correctly applying the rules based on the provisions of the agreement.

While totalization agreements aim to coordinate the social security laws of the two countries to the greatest extent possible, there is occasionally a fundamental difference in the tax treatment of one type of profession or economic activity in one country as opposed to another. This frequently occurs for clergy and board members, who are treated as self-employed in the US for social security purposes and quite commonly as employees of the organization for which they are providing services in the other country.

This does not present a problem where totalization agreements provide for the same treatment of employment and self-employment (that is, where a person can transfer their self-employment activity from one country to the other for a period that is not expected to exceed five years). However, where employment is treated differently from self-employment under the terms of an agreement (such as where a residence rule applies to assign social security coverage to self-employed workers), many agreements include a tiebreaker rule to determine which country's laws will apply.

This provision can vary substantially from agreement to agreement, but under most newer agreements, it provides that the work will be covered under the laws of the country that considers it to be self-employment if the worker resides in that country, and under the laws of the country that considers it to be employment in any other case.

Takeaways

Religious organizations and institutions of higher learning often face several unique considerations with respect to social security obligations. Maintaining cognizance of these requirements not only helps ensure that employers remain compliant, but also protects employees by allowing them to enjoy adequate retirement income.

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